

BY AUTHORITY

MOSES P. WAIWAI, Esq., has this day been appointed an Agent to take acknowledgment of Labor Contracts for the District of Waikuli, Island of Maui.

J. A. KING,
Minister of the Interior.
Interior Office, April 17, 1893.
3329-34

Sale of Lease of a Government Land in Hana, Maui.

On TUESDAY, May 16, 1893, at 12 o'clock noon at the front entrance of Alioli Hale, will be sold at Public Auction, the lease of a tract of Government land in Hana, Maui, containing an area of 2,800 acres, a little more or less.

Term—Lease for 15 years.
Upset price, \$300 per annum, payable semi-annually in advance.

J. A. KING,
Minister of the Interior.
Interior Office, April 17, 1893. 1475-3

Sale of Lease of a Portion of the Government Land of Haiku, Hilo, Hawaii.

On TUESDAY, May 16, 1893, at 12 o'clock noon at the front entrance of Alioli Hale, will be sold at Public Auction, the lease of a portion of the Government land of Haiku, Hilo, Hawaii, containing an area of 128 acres, a little more or less.

Term—Lease for 15 years.
Upset price, \$125 per annum, payable semi-annually in advance.

J. A. KING,
Minister of the Interior.
Interior Office, April 17, 1893. 1475-3

Sale of a Piece of Government Land on Nuuanu Avenue, Honolulu, Oahu.

On TUESDAY, May 16, 1893, at 12 o'clock noon, at the front entrance of Alioli Hale, will be sold at public auction, a piece of Government land known as the "Reservoir Lot," marked on the lot recently sold to S. C. Allen, and now occupied by J. H. Paty, Nuuanu Avenue, Honolulu, Oahu, containing an area of 5513 square feet, a little more or less.

Upset price \$300.
JAMES A. KING,
Minister of the Interior.
Interior Office, April 15th, 1893.
3356 1475-34

Supreme Court of the Hawaiian Islands.

ORDER FOR SPECIAL TERM.

Deeming it essential to the promotion of justice, and by virtue of the authority vested in me by Section 54 of the Act to Reorganize the Judiciary Department, I hereby order a SPECIAL TERM of the Supreme Court to be held in the Court Room, (upstairs) of Alioli Hale, Honolulu, on THURSDAY, the 20th April, 1893, at 10 o'clock A. M.

Witness my hand and seal of the Supreme Court, at Honolulu, this 15th day of April A. D. 1893.
A. F. JUDD,
Chief Justice of the Supreme Court.

Attest:
HENRY SMITH,
Clerk. 3356-41

Notice.

Any person wishing to obtain a Wash to destroy the Blight on Citron and other trees, can procure the same at the Government Nursery on King street, by furnishing to the attendant in charge 4 lbs. of Rosin, 2 lbs. of Tallow and 2 lbs. of caustic Potash. The above ingredients will be manufactured free of charge into 5 gallons of solution or soap, one pint of which added to one and a half gallons of water will make an effective wash for destroying the White Blight on Orange, Lime, Tamarind and other trees. To render the treatment effective, all dead branches should be removed and burnt, and the tree well sprayed with the wash, repeating the spraying in 8 or 10 days.

The solution will be delivered in 5-gallon tins, and persons applying for the same are requested to bring an empty tin in lieu of the full one taken away.

J. MARSDEN,
Commissioner of Agriculture and Forestry.
Honolulu, April 13, 1893. 3354-35

Sale of Lease of Government Lands in Hualala and Kohala, Hawaii.

On TUESDAY, May 16th, 1893, at 12 o'clock noon, at the front entrance of Alioli Hale, will be sold at Public Auction, the Lease of the following Tracts of Government land in Hualala and Kohala, Hawaii:

Tract No. 1—Containing an area of 60 9-10 acres, upset price \$2.50 per acre.
Tract No. 2—Containing an area of 76 7-10 acres, upset price \$2.25 per acre.
Tract No. 3—Containing an area of 137 6-10 acres, upset price 50c. per acre.
Term—Lease for 15 years.
Rent payable semi-annually in advance.

J. A. KING,
Minister of the Interior.
Interior Office, April 14, 1893.
3355-44 1472-31

Mr. WILLIAM HORNER of Kukuiahae has been appointed by the Board of Education School Agent for the district of Hamakua, island of Hawaii, in place of Mr. Charles Williams.

W. JAS. SMITH,
Secretary.
Office of the Board of Education, April 13, 1893.
3354 1475-34

In the Supreme Court of the Hawaiian Islands.

MARCH TERM, 1893.

TALULA L. HATSELDEN vs. WAHINEAFA (w.)

EJECTMENT.

BEFORE JUDD, C. J., BICKERTON AND FREAR, JJ.

A devise of land by will was uncertain as to which of two lots, Nos. 2 and 3, was devised to A. Defendant the purchaser of lot No. 2 sold it nineteen years ago describing it in the deed as the lot purchased of A. and the adjoining lot No. 3 as the property of B. Defendant thereafter took possession of lot No. 3. In an action by the grantee of B to recover possession of lot No. 3 of defendant, there must be more evidence than defendant's denial that she executed the deed of lot 2 to disprove the estoppel claimed as the effect of her deed, as showing her construction of the devise. The evidence showing that the jury must have acted in giving their verdict for defendant through bias or misunderstanding, the verdict is set aside and a new trial ordered.

OPINION OF THE COURT BY BICKERTON, J.

This case was first heard at the October term 1892 of the Supreme Court, and the jury disagreed and were discharged. The case came on again for hearing at the February term, 1893, of the First Circuit Court under the Act to reorganize the Judiciary Department, and the jury rendered a verdict for the defendant. On the 23d of February plaintiff by her attorney filed a motion for a new trial on the ground that the verdict was contrary to the weight of evidence and to the law as laid down in the charge of the Court. On the 28th of the same month the said motion was argued before Frear, J., the judge presiding at the trial, and the Court overruled the motion. The matter now comes here on a bill of exceptions to the ruling of the Court in having denied said motion.

The history of the case is briefly as follows: About the year 1867 one Makaioulu died leaving the property maula of Queen street in Honolulu, marked as Lots 1, 2 and 3 on the map which was introduced in evidence. By his will he divided the property into three lots, but without stating the metes and bounds of any of them, leaving Lot 1 to his widow for life, remainder to Kalo, his daughter, Lot 2 to his brother Keana for life, remainder to Kekipi, wife of Keana, and Lot 3 to his daughter Kalo. There is practically no dispute as to the location of Lot 1, which is conceded to have been the makai portion, as marked on the map. But the maula kuleana, apparently intended to constitute Lots 2 and 3, now furnishes the dispute as to which is Lot 2 and which is Lot 3.

It was in evidence that the residence of Makaioulu was so situated as that the language of the will would, or at least might, indicate the Ewa side of the maula kuleana as being that left to Keana, and to which both parties hereto now claim title. It is conceded that defendant succeeded by regular conveyances to the title of Keana, and plaintiff's claim is founded upon a division of the maula kuleana in 1876, between defendant and Kalo, whereby defendant assumed ownership of the Waikiki part (marked 2 on the map), and Kalo assumed ownership of the Ewa portion (marked 3 on the map) and it is upon those deeds, then executed, that plaintiff chiefly relies.

Makaioulu died in 1867; his wife died soon after, and left Kalo, their daughter, a minor, who was placed under successive guardians, among whom was the defendant, her aunt. Defendant lived in the same house with the Makaioulu family, and after the deaths referred to, continued there with Kalo the minor until the house became unfit for occupation. That house was Lot 1 on the map, Kalo's title to which is not questioned. When that house became uninhabitable (defendant having in the meantime bought the Keana interest from Keana's widow), defendant took what material was useful in the old house, and with other and newer material built a house maula of the old one on the lot marked 3 on the map. Defendant and Kalo (then still a minor) went to live in the newer house, and there continued till Kalo came of age, and still later got married and went to live on Kauai.

In the meantime, in 1874, defendant and Kalo executed a mortgage as co-owners of the present Lots 2 and 3 (the entire maula kuleana) to M. McInerney, wherein they assumed to be owners of the entire kuleana. There was some controversy as to the execution of this mortgage, but the facts were fully proven by His Honor the Chief Justice, who drew the mortgage, and who identified defendant to J. H. Paty, who took her acknowledgment. The execution of this instrument was on the first trial flatly denied by defendant; but on the second trial she modified that denial into a failure of memory.

The McInerney mortgage was soon after transferred to Kekanaole (apparently for Fanny Young Kekanaole), and when it matured, Fanny Young's agent Kekanaole went to defendant and Kalo where they were living on the land in issue and demanded payment. Defendant, in her evidence, says: "He asked us to pay what we owed, and we replied that we had no money." It was then arranged that they should make conveyance of their land in order to pay off the mortgage, and the deed from defendant to Fanny Young, covering the Waikiki portion (Lot 2 on map), and the mortgage from Kalo to Fanny Young of the Ewa portion (Lot 3 on map) of the maula kuleana, were the results of that effort to pay off the McInerney mortgage.

At the first trial of the case the plaintiff offered in evidence and filed the original deed from defendant to Fanny Young. Between that trial and the last one held, that deed has been abstracted from the Court files by some person unknown, and has

not been found since; a certified copy thereof is however on file and also of the mortgage from Kalo to Fanny Young, executed the same day, and which follows the deed upon the next page of the registry. Both documents were acknowledged before Thomas Brown, Registrar of Deeds. The mortgage of Kalo to Fanny Young was afterwards released, and another mortgage was given by her to Mrs. Borres, and under the last one mentioned, the foreclosure proceedings were had through which the plaintiff claims title.

We may fairly start from 1874, the time when defendant and Kalo executed the mortgage to McInerney of Lots 2 and 3, being the maula portion. The record of this mortgage was notice to the world that they claimed to be the owners of these two lots. When the payment of this mortgage was demanded defendant in her evidence says, "He asked us to pay what we owed, and we replied that we had no money." It then became necessary to raise the money, and then they certainly divided the maula portion, Kalo giving a mortgage to Fanny Young of her portion, Lot 3, and defendant giving a deed of her portion, Lot 2, to Fanny Young; in that deed defendant recognizes the other adjoining lot as belonging to Kalo, and describes the lot she was selling as the lot conveyed to her by Kekipi; this deed was put on record, and was notice to the world that she only claimed the lot she sold, and was a declaration that the maula portion Kalo took Lot 3, and she took Lot 2. The defendant in her evidence speaks of her visit to the Registry Office in company with Kalo to arrange some papers in connection with her land and talking with Mr. Brown the registrar; these papers must have been the mortgage from Kalo and the deed from herself; the evidence points clearly to this fact. This certainly was notice to any purchaser of lot 3, searching the records, that defendant had no claim to it, and that it was the property of Kalo. But defendant denies that she executed that deed; her evidence is not positive; but she tells many facts which of themselves might well be held to prove her execution without the aid of direct and positive evidence from any other source. But we have the positive evidence of Mr. Lazarus, a subscribing witness to the deed, who was at the date of the execution of the deed a clerk and interpreter in W. C. Jones' office where the deed was drawn, and he (Mr. Lazarus) confesses with a minuteness of detail to the execution of the deed, and to the fact of his having got into a quarrel with Mr. Jones his employer, because of having told her at the time of reading and interpreting the deed to her before signature, that she was being taken in and was selling too cheaply.

To have found the verdict that the jury did, they must have found that the defendant did not execute that deed. We are of opinion that such finding cannot be sustained in the face of the evidence adduced in the case. There is not a shadow of doubt that there was a joint mortgage from defendant and Kalo, and that it was lifted by another mortgage from Kalo of part of the land and a deed from defendant of the other part. This fact in itself under the circumstances, is in our opinion almost conclusive. Defendant says herself they had not the money to pay the mortgage; the first mortgage was released; it certainly was not released without a settlement being had of the amount due. The evidence points beyond a doubt to the fact that the settlement was made in the way above stated.

The Court charged the jury that the will of Makaioulu being uncertain as to the way the maula portion was to be divided, then it is to be construed in the way in which the parties who are interested themselves and those under whom they claim construed it. The evidence is clear as to how defendant and Kalo construed it, defendant selling her share by metes and bounds and Kalo mortgaging hers.

The Court further charged, "I instruct you as a matter of law that after a lapse of time, after a long time, and if the parties have acted as if the deed were a deed executed by the defendant, then her mere testimony that she did not execute it is not sufficient. There should be something more. If you find that the deed was executed a long time ago, as you must, and if you further find that she assented to it and that possession has been in accordance with it, then her mere testimony as a matter of law is not sufficient to show that she did not execute it; that has been decided by our Supreme Court." Kamala vs. Lovell, 5th Haw. p. 62. Further on the Court says, "If you find that she executed that deed she is presumed to know the contents of it; she cannot come in here and say that there was a mistake or that there was fraud." Further, "The acts of the defendant and those under whom she claims would estop her from saying anything contrary to what her acts have shown."

No exception was taken to any part of the charge; it was the law of the case as given by the Court. Defendant's counsel contends, and it is his only contention, that the fact was left to the jury and they found for the defendant, and the Court cannot interfere with the verdict. But a verdict must be in conformity to the law and the evidence; there must be evidence to support it. The charge of the Court in this case was clear and positive that the mere denial of defendant that she executed the deed was not sufficient. But we have the positive evidence that she did execute it. In the face of the instructions given by the Court, and the evidence, we fail to see how the jury could find for the defendant. In Bishop vs. Kela, 7th Haw. p. 591, the Court says: "If it appears clearly to the Court that the verdict is so manifestly against evidence as to induce the conviction that a mistake has been made or that injustice has been done, or when it appears that the verdict is clearly, palpably, decidedly and strongly against the evidence, or is manifestly the result of bias or of misander-

standing on the part of the jury, the verdict will be set aside."

In the case at bar we are of the opinion that the verdict is of this nature and ought to be set aside and a new trial ordered. And it is so done accordingly, and the exceptions are sustained.

C. W. Ashford for plaintiff; J. N. Wahi for defendant.
Honolulu, April 12, 1893.

BEHRING SEA DISPUTE.

Opening Session of the Great International Council.

PARIS, March 23.—The Court of Arbitration appointed to adjust the difficulties between Great Britain and the United States in relation to the seal fisheries in Behring Sea met to-day in the office of the French Foreign Minister. All the members of the Court were present. The United States is represented by Justice Harlan, of the Supreme Court, and Senator John T. Morgan; Great Britain, by Lord Hanmer and Sir John S. D. Thompson, of Canada; France, by the Baron de Courcelles; Italy, by the Marquis Emilio Visconti-Venosta, and Sweden, by Judge G. W. Gram, of the Supreme Court of Christiania. The questions involved are:

1. What exclusive jurisdiction in the sea known as the Behring Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

3. Was the body of water known as the Behring Sea included in the phrase "Pacific Ocean," as used in the treaty of 1825 between Great Britain and Russia, and what rights, if any, in the Behring Sea was held and exclusively exercised by Russia after said treaty?

4. Did not all the rights of Russia as to jurisdiction and as to seal fisheries in Behring Sea east of the water boundary in the treaty between the United States and Russia of the 30th of March, 1867, pass unimpaired to the United States under that treaty?

5. Has the United States any right, and, if so, what right, of protection of property in the fur seals frequenting the islands of the United States in the Behring Sea when such seals are found outside of the ordinary three-mile limit?

The agent of the United States is John W. Foster, of Indiana, who was Secretary of State for a short time under the Harrison Administration, and the agent for Great Britain is C. H. Tupper, of Canada, who is the Canadian Minister of Marine and Fisheries.

For Counsel, the United States has E. J. Phelps, of Vermont, who was Minister to England; James C. Carter, the President of the State Bar Association, of New York; Frederick R. Conder, of New York, President of the Manhattan Club, who has a tremendous law practice; and Judge H. V. Blodgett, who lately retired from the United States Circuit Court, at Chicago.

The British lawyers include Sir Charles Russell, the Attorney-General of Great Britain in the Liberal Cabinet; Sir Richard Webster, ex-Attorney-General; Mr. S. Robinson, of the Canadian Bar, and Hon. W. H. Cross.

The Court organized by the selection of Baron de Courcelles as President; resolved to sit 4 1/2 hours daily, and adjourned until April 4, in order to examine the printed arguments by the two sides.

All the members of Court made a general and formal visit to President Carnot to-day, Hon. T. J. Coolidge, American Minister, and the Marquis of Dufferin, the British Ambassador, presenting the several members to the President.

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General Advertisements.

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Orders on the Commissioner of Agriculture for

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3355-41 FORT STREET.

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MISS BERRY'S SELECT PRIMARY School for Girls and Boys, 32 Emma Street, will re-open on MONDAY, April 17th. 3356-12

Horse Pasture at Kaneohe.

HORSES PASTURED AT reasonable rates, and on the best of feed. Apply W. F. ALLEN, Or Manager at Ranch; Mutual Telephone 713. 3340-41

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Saved My Wife From the Grave. The salt rheum has entirely healed and she is restored to good health. I have many friends and relatives in the east who will be glad to know that

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Box plan now open at Levey's where Tickets can be had for all parts of the house. 3357-4d

For Waianae.

THE SLOOP WAIANAE will sail MONDAY, April 17, at 10 A. M. for Waianae, and will hereafter run regularly between Honolulu and Waianae, making two trips per week, leaving here Mondays and Thursdays at each week at 10 A. M. Honolulu agent

A. C. PESTANA,
With Gonzales & Co.
3355-2w

QUARTERLY MEETING.

C. BREWER & COMPANY, LIMITED.

THE ADJOURNED QUARTERLY Meeting of C. Brewer & Company, Limited, will be held at the Company's Office, on Queen Street in Honolulu, on FRIDAY, the 21st inst., at 10 o'clock A. M.

E. F. BISHOP, Secretary.

FOR SALE.

WE OFFER FOR SALE AT THE following prices:

Poha Jam in 2 lb. cans at \$4.50 per doz.
Poha Jam in 1 lb. cans at 2.50 per doz.
Poha Jelly in 1 lb. cans at 3.50 per doz.
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China Orange and Papaia Jam, (this is a very superior article), in 2 lb. cans at \$4.50 per dozen.

TERMS CASH.

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3140-3m

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I BEG TO NOTIFY MY CUSTOMERS and the public generally, that I can now be communicated with by Mutual Telephone No. 409. Mr. H. Loe will continue to collect for me.

J. W. McDONALD, Proprietor City Shoeing Shop, 3343-2w Fort Street, above Hotel St.

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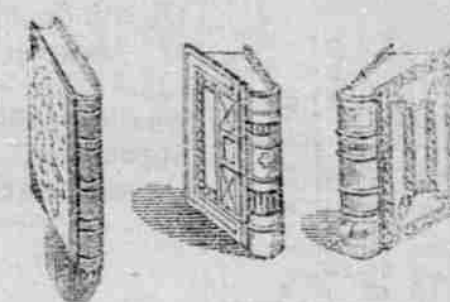
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